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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

C,

[redacted]

DATE JUL 30 2012 Office: CALIFORNIA SERVICE CENTER [redacted]

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, ("the director") denied the employment-based immigrant visa petition. The petitioner timely filed an appeal to the denied petition. The matter is now before the Administrative Appeals Office ("AAO") on appeal. The AAO will dismiss the appeal.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1153(b)(4), to perform services as a religious instructor. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits an attachment to the Form I-290B and further documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States –
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The U.S. Citizenship and Immigration Services ("USCIS") regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The

USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner filed the Form I-360 petition on April 8, 2011. Reverend [redacted] of the petitioning church signed the form, thereby certifying under penalty of perjury that the petition and the evidence submitted with it are all true and correct. On that form, the petitioner identified the beneficiary's "Current Nonimmigrant Status" as "R-1," and stated that his status would expire on May 14, 2011. Asked whether the beneficiary had ever worked in the United States without authorization, the petitioner answered "No."

On August 1, 2011, the director issued a Request For Evidence ("RFE") requesting various documents, such as a social security record, the beneficiary's IRS Forms W-2, more information about the proffered position, such as a list of the minimum education, training, and experience necessary to do the job, and evidence to show that the beneficiary has met these requirements.

The petitioner timely responded to the RFE. On September 8, 2011, counsel for the petitioner submitted a letter, stating:

> Pursuant to your Request For Evidence dated August 1, 2011, enclosed please find the following documents:
>
> 1. **SOCIAL SECURITY CARD RECORD:** Enclosed is the Social Security Administration's Form SSA-7050-F4 for the Beneficiary. I am also enclosing the receipt for this form specifically stating that the Beneficiary never worked at [redacted] The Social Security employee explained to the Beneficiary that he could protest this information on the print-out as being incorrect.
> 2. **BENEFICIARY'S W-2 TAX DOCUMENT:** Enclosed are two sealed envelopes from the IRS that the Beneficiary received over the mail. I would like to inform the Service that the Beneficiary went in person, as you instructed on your Request For Evidence under this paragraph, and applied for these printouts. He was given copies of these documents and was instructed to call the IRS number to obtain sealed envelopes over the mail; they did not provide sealed documents. After examination of these printouts, I saw [redacted] as [a]n employer that apparently reported income for the Beneficiary. This information is absolutely incorrect, in fact, beneficiary went by this business and spoke to a manager who confirms that she has been working there for years and does not know the Beneficiary. Furthermore, the name that appears as the employee is [redacted] when Beneficiary's middle initial [redacted] Furthermore, the address that appears on these printouts for this person is [redacted] and this is not Beneficiary's address; please see color copy of his driver's license with

> Beneficiary's address [redacted]. He has never received a W-2 from this employer nor has he ever worked for this company.

The petitioner submitted a social security report from 2007-2010 which lists both [redacted] and [redacted] on it. It also submitted a receipt dated August 11, 2011 from the Social Security Administration. On this letter, in a blue highlighted box, there is a handwritten note which states: "Removing earnings from [redacted] Do not charge NH for another printout. He never worked there." This handwritten note is initialed "[redacted]" There is no evidence of who this person is, no explanation as to what "[redacted]" means, and no revised social security statement. The petitioner also submitted the beneficiary's certified tax returns from the IRS. These certified tax returns also contain both the names [redacted] and [redacted] and list both the petitioner and [redacted] as the beneficiary's employers.

The director denied the petition on October 13, 2011. In addition to citing the regulations above, the director cited the regulation at 8 C.F.R. § 214.2(r)(3), which provides that R-1 nonimmigrants can only work for the organization for whom the petition has been approved, unless a different employer received prior approval from USCIS; otherwise the alien will be out of status. The director also quoted the regulation at 8 C.F.R. § 274a.12(b)(16), which states that an R-1 nonimmigrant may only be employed by the religious organization through whom the status was obtained.

The director stated that:

> The petitioner states that the beneficiary has been employed with them since 2009. United States Citizenship and Immigration Services (USCIS) records show that the beneficiary was granted a nonimmigrant religious worker classification on April 4, 2009 valid until May 14, 2011 with the petitioner. However, proof of remuneration submitted such as Social Security record and Internal Revenue Service record, reflects that in 2010, the beneficiary was also working for [redacted]
>
> Current R-1 regulation prohibits alien from receiving compensation for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. Therefore, the beneficiary did not have authorization to work for [redacted] The beneficiary has failed to maintain his or her nonimmigrant status for not conforming to the requirements of the regulation.
>
> Therefore, the evidence is insufficient to establish that the beneficiary has been performing full-time religious work for at least the two-year period immediately preceding the filing of the petition in lawful immigration status.

On appeal from that decision, the petitioner submits a letter from the HR Specialist of [redacted], and a letter from the petitioner. The petitioner also submits a copy of [redacted]

[redacted] IRS Form W-4 and the beneficiary's driver's license. Counsel argues that these documents highlight the difference between their addresses and their signatures.

The AAO is not persuaded by counsel's arguments. First, counsel does not adequately explain why both the Social Security statement and the beneficiary's certified tax returns both contain the same information about the beneficiary working at the donut shop, or why the other [redacted] has the same social security number as the beneficiary. Further, neither counsel nor the petitioner submitted amended social security statements nor amended certified tax returns reflecting the removal of the income from [redacted]

Further, the evidence submitted on appeal does not overcome the director's findings, and raises several unresolved issues. First, the letter from [redacted] states:

> This letter is to verify that the person who came to apply at our [redacted] located at [redacted] was [redacted]. Mr. [redacted] date of birth [redacted] [sic], presented social security [redacted] and Driver's License [redacted]

This letter contains several inconsistencies. First, the address for [redacted] listed in the letter is different from the address of the [redacted] listed in both the Social Security statement and the certified tax returns that the petitioner submitted in response to the RFE. In addition, the social security number of [redacted] is the same as the beneficiary's social security number listed in the Form I-360 petition. [redacted] birthday is also the same birthday as the beneficiary's son, whose name is coincidentally [redacted], yet neither the petitioner nor counsel ever state that this person was in fact the beneficiary's son. In the beneficiary's tax returns in the record, the beneficiary's son and the beneficiary have different social security numbers.

In addition, the AAO questions the authenticity of the IRS Form W-4 submitted by the petitioner and counsel. Neither counsel nor the petitioner explains how they obtained [redacted] Form W-4, which is supposed to be a confidential document subject to the Privacy Act. Further, the top part of the document is not properly filled out, which also raises doubts as to its legitimacy.

Finally, the petitioner's letter does not state that the beneficiary has only worked for the church as counsel claims on appeal.

For the reasons discussed above, the AAO will affirm the director's finding that the beneficiary did not continuously engage in authorized employment throughout the two years immediately preceding the petition's filing date. On appeal, the petitioner has failed to provide sufficient documentary evidence to overcome the director's finding that the beneficiary worked for an employer for which he was not authorized.

As an additional matter, the AAO also finds that the petitioner failed to establish that the petitioner has the ability to compensate the beneficiary. An application or petition that fails to comply with the

technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The regulation at 8 C.F.R. § 204.5(m)(10) requires that the petitioner submit verifiable evidence of how the petitioner intends to compensate the alien. In the Form I-360 petition attestation clause, the petitioner stated that the beneficiary's yearly salary will be $38,750. However, the record contains two IRS forms W-2 showing that the petitioner paid the beneficiary $20,769 in 2009 and $36,000 in 2010. Therefore, the petitioner has not established past compensation through payment of the beneficiary's salary.

As the petitioner is unable to show its ability to compensate through past compensation of the beneficiary, the AAO will next look at the petitioner's financial documentation to determine whether it has the ability to compensate the beneficiary. The petitioner submitted annual reports for 2009 and 2010. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the petitioner's ability to compensate the beneficiary. Therefore, the petitioner has not shown the ability to compensate the beneficiary. For this additional reason, the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed